

46 Am. Jur. 2d Judges § 250

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Judges

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XII. Special, Substitute, or Pro Tem Judges

D. Objection to Authority

§ 250. Time for objection to substitute judge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

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Any objection to the authority of a special or temporary judge must ordinarily be made at or before trial,¹ or at the time the judge assumes to act,² or the objection is waived.³ A party may not submit matters to and await rulings by a special judge before objecting to the special judge's presence in the action.⁴

A party challenging the election of a special judge has the burden of producing a record showing that an attack on the election was made in the trial court.⁵

An objection after trial by posttrial motion is generally held to be untimely.⁶

Absent a timely challenge, the orders of a subordinate judicial officer sitting as a temporary judge, even without proper stipulation, become final upon expiration of the time for rehearing.⁷

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Footnotes

- 1 [State v. Sagarese](#), 34 N.J. Super. 126, 111 A.2d 777 (App. Div. 1955); [Sparkman v. State](#), 55 S.W.3d 625 (Tex. App. Tyler 2000); [Lewis v. Leftwich](#), 775 S.W.2d 848 (Tex. App. Dallas 1989).
- 2 [Skipper v. State](#), 525 N.E.2d 334 (Ind. 1988).
- 3 [Kentucky Utilities Co. v. South East Coal Co.](#), 836 S.W.2d 407 (Ky. 1992); [Bonilla v. State](#), 740 S.W.2d 583 (Tex. App. Houston 1st Dist. 1987), petition for discretionary review refused, (Apr. 27, 1988).
As to waiver of objection, see § 251.
- 4 [Bostic v. State](#), 980 N.E.2d 335 (Ind. Ct. App. 2012).

- 5 Foundation Telecommunications, Inc. v. Moe Studio, Inc., 341 Ark. 231, 16 S.W.3d 531 (2000); Travis v.
State, 328 Ark. 442, 944 S.W.2d 96 (1997).
- 6 Lucom v. Potter, 131 So. 2d 724 (Fla. 1961); Oklahoma Transp. Co. v. Lewis, 1936 OK 405, 177 Okla.
106, 58 P.2d 128 (1936).
- 7 In re Brittany K., 127 Cal. App. 4th 1497, 26 Cal. Rptr. 3d 487 (1st Dist. 2005).

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